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## 19.1 Court's Options Following Convictions in Designated Cases

MCL 712A.2d(8); MSA 27.3178(598.2d)(8), provides that following a judgment of conviction\* in a designated case, the court must enter a disposition or impose a sentence authorized under MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n).

\*See Form JC 70.

MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), in turn, allows the court to:

- F** enter any disposition allowed under MCL 712A.18; MSA 27.3178(598.18);\* or
- F** if the court determines that the best interests of the public would be served, impose any sentence, including probation or an alternative sentence provided by statute, upon the juvenile that could be imposed upon an adult convicted of the same offense;\* or
- F** delay imposing a sentence of imprisonment while the court has jurisdiction over the juvenile by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition allowed under MCL 712A.18; MSA 27.3178(598.18).\*

\*See Section 19.4, below, and Chapter 12, Part II.

\*See Sections 19.5 – 19.9, below, and Chapter 20.

\*See Section 19.10, below, and Chapter 21.

MCR 5.903(D)(7) defines sentencing, in the context of designated proceedings, as the imposition of any sanction on a juvenile that could be imposed on an adult convicted of the same offense, or the decision to delay the imposition of such a sanction. Thus, the definition excludes juvenile dispositions.

\*See Section 19.6, below, for a list of offenses for which juveniles may be committed to the Department of Corrections and their maximum penalties. See also MCL 791.220g; MSA 28.2290(7), which provides for youth correctional facilities within the Department of Corrections.

**NOTE:** MCL 712A.18h; MSA 27.3178(598.18h), states that juveniles “sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections.” This limitation does not apply to juveniles convicted of specified juvenile violations. *Id.*\* Because MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), deals with the initial decision to impose or delay imposition of sentence, it is unclear whether juveniles may be committed to the Department of Corrections during the delay in imposition of sentence.

When imposition of an adult sentence has been delayed, the court may impose sentence at any time during the delay under MCL 712A.18i; MSA 27.3178(598.18i), and section (11) of that statute contemplates a sentence of imprisonment. Thus, it appears that commitment to the Department of Corrections is a sentencing option in court-designated cases during the period that the court has jurisdiction over the juvenile. See also Section 21.12, Note 1, for a discussion of limitations on sentencing juveniles following probation violations requiring probation revocation, where the juveniles were originally convicted of non-specified juvenile violations.

## 19.2 Factors to Determine Whether to Impose Juvenile Disposition or Adult Sentence

In determining whether to enter an order of disposition or impose a sentence, the court must consider all of the following factors, giving greater weight to the seriousness of the offense and the juvenile’s prior record:

- (i) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines,\* the use of a firearm or other dangerous weapon, and the impact on any victim.
- (ii) The culpability of the juvenile in committing the alleged offense, including, but not limited to, the level of the juvenile’s participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.
- (iii) The juvenile’s prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.
- (iv) The juvenile’s programming history, including, but not limited to, the juvenile’s past willingness to participate meaningfully in available programming.
- (v) The adequacy of the punishment or programming available in the juvenile justice system.
- (vi) The dispositional options available for the juvenile.

\*See Michigan Sentencing Guidelines (2d ed, 1988), and Section 20.9, Note, on the status of legislative sentencing guidelines.

MCL 712A.18(1)(n)(i)–(vi); MSA 27.3178(598.18)(1)(n)(i)–(vi), and MCR 5.955(A)(1)–(6).

### 19.3 Standard and Burden of Proof

The court shall enter an order of disposition unless the court determines that the best interests of the public would be served by sentencing the juvenile as an adult. The prosecuting attorney has the burden of proving by a preponderance of the evidence that, on the basis of the criteria listed in Section 19.2, above, the best interests of the public dictate adult sentencing. MCR 5.955(B).

**NOTE:** No time requirement is specified in the applicable statutes or court rules for the court's decision on whether to sentence the juvenile as an adult or to order a juvenile disposition. However, a sentencing hearing must be held within a reasonably prompt time after the plea or verdict, MCR 6.425(D)(2), and a dispositional hearing must be held within 35 days of the plea or adjudication if the juvenile is detained or the juvenile must be released, MCR 5.943(B). Thus, the court should determine whether it will order a disposition or impose a sentence within a period that would permit the court to comply with these requirements.

### 19.4 Required Procedures for Ordering a Juvenile Disposition

If the court does not determine that the juvenile should be sentenced as an adult, the court must hold a dispositional hearing and comply with the procedures in MCR 5.943. MCR 5.955(E).\*

\*See Chapter 12.

### 19.5 Required Procedures for Imposing an Adult Sentence

If the court imposes sentence, it shall enter a judgment of sentence.\*

\*See Forms JC 71 and 72.

If the court imposes a sentence of imprisonment, the juvenile shall receive credit against the sentence for time served before sentencing. MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n).\*

\*See Section 20.26 for a discussion of credit for time served before sentencing.

### 19.6 Offenses for Which Juveniles May Be Sentenced to Prison

Juveniles convicted of specified juvenile violations and sentenced under MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), may be committed to the Department of Corrections. MCL 712A.18h; MSA 27.3178(598.18h).\*

\*See Section 19.1, Note, above.

## Section 19.6

\*See also Section 16.4 for a complete list of specified juvenile violations.

\*See Section 20.25 (mandatory minimum sentences).

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The maximum statutory penalties for specified juvenile violations\* are as follows:

- F burning a dwelling house, MCL 750.72; MSA 28.267, **imprisonment for not more than 20 years;**
- F assault with intent to murder, MCL 750.83; MSA 28.278, **imprisonment for life or any term of years;**
- F assault with intent to maim, MCL 750.86; MSA 28.281, **imprisonment for not more than 10 years, or a fine of not more than \$5000.00;**
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284, **imprisonment for life or any term of years;**
- F attempted murder, MCL 750.91; MSA 28.286, **imprisonment for life or any term of years;**
- F first-degree murder, MCL 750.316; MSA 28.548, **mandatory life imprisonment without parole;\***
- F second-degree murder, MCL 750.317; MSA 28.549, **imprisonment for life or any term of years;\***
- F kidnapping, MCL 750.349; MSA 28.581, **imprisonment for life or any term of years;**
- F first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), **imprisonment for life or any term of years;\***
- F armed robbery, MCL 750.529; MSA 28.797, **imprisonment for life or any term of years;\***
- F carjacking, MCL 750.529a; MSA 28.797(a), **imprisonment for life or any term of years;**
- F bank, safe, or vault robbery, MCL 750.531; MSA 28.799, **imprisonment for life or any term of years;**
- F assault with intent to do great bodily harm, MCL 750.84; MSA 28.279, if armed with a dangerous weapon, **imprisonment for not more than 10 years, or a fine of not more than \$5000.00;**
- F first-degree home invasion, MCL 750.110a(2); MSA 28.305a(2), if armed with a dangerous weapon, **imprisonment for not more than 20 years, or a fine of not more than \$5000.00, or both;**
- F escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency, MCL 750.186a; MSA 28.383a, **imprisonment for not more than 4 years, or a fine of not more than \$2000.00, or both;**

- F manufacture, sale, or delivery, MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), or possession, MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i), of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, **life imprisonment, or any term of years not less than 25 years**;<sup>\*</sup>
- F any attempt, MCL 750.92; MSA 28.287, to commit any of the above crimes, **imprisonment for not more than 5 years, or incarceration in the county jail for not more than 1 year**;
- F any solicitation, MCL 750.157b; MSA 28.354(2), to commit any of the above crimes, **for solicitation to commit murder, imprisonment for life or any term of years; for other specified juvenile violations, imprisonment for not more than 5 years, or a fine of not more than \$5000.00, or both**;
- F any conspiracy, MCL 750.157a; MSA 28.354(1), to commit any of the above crimes, **same penalty that could be imposed for target offense and, in court's discretion, a fine of \$10,000.00**.

<sup>\*</sup>See Section 19.9(A), below for a more detailed discussion of this statute.

**NOTE:** A juvenile may also be sentenced to prison for a lesser-included offense of a specified juvenile violation arising out of the same transaction, or for any other offense arising out of the same transaction, if the juvenile was charged with a specified juvenile violation. Consequently, prison is an option for all prosecutor-designated cases, but is not initially an option in court-designated cases. See Sections 12.4 and 12.5 for definitions of prosecutor-designated cases and court-designated cases.

## 19.7 Required Procedures for Ordering Adult Probation

The court may place the juvenile on adult probation when allowed by law. See, however, MCL 771.1; MSA 28.1131 (adult probation precluded for murder, first- or third-degree criminal sexual conduct, armed robbery, and major controlled substance offenses other than MCL 333.7401(2)(a)(iv) or 333.7403(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv) or 14.15(7403)(2)(a)(iv)), and *People v Blyth*, 417 Mich 430, 435–36 (1983) (Court's interpretation of the phrase "life or any term of years" to require imprisonment may preclude probation for assault with intent to murder, assault with intent to commit armed robbery, attempted murder, kidnapping, carjacking, bank, safe, or vault robbery, or conspiracy to commit these offenses).<sup>\*</sup>

If the court, following conviction in a designated case, imposes a sentence of probation in the same manner as probation could be imposed upon an adult convicted of the same offense for which the juvenile was convicted, the probation supervision and related services shall not be performed by employees of the Department of Corrections. MCL 712A.9a; MSA 27.3178(598.9a). In such cases, probation supervision and related services will be performed by Family Division probation officers or by Family Independence Agency delinquency workers.

<sup>\*</sup>See Forms JC 71 and 74.

## 19.8 Required Procedures for Imposing Jail Sentences

The court shall not impose a sentence of imprisonment in the county jail under MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), unless the present county jail facility for the imprisonment of the juvenile would meet all requirements under federal law and regulations for housing juveniles, and the court shall not impose the sentence until it consults with the sheriff to determine when the sentence will begin to ensure that space will be available for the juvenile. MCL 712A.18(15); MSA 27.3178(598.18)(15).

## 19.9 Requirements for Imposing Alternative Sentences for Major Controlled Substances Offenses

\*See Sections 23.4 (“automatic” waiver) and 24.26 (“traditional” waiver).

**NOTE:** There were several amendments made to the Controlled Substance Act in 1996 that were designed specifically for juveniles who are charged with major controlled substances offenses in designated proceedings and waiver proceedings.\* These amendments are discussed here. For information about controlled substance offense sentences that apply to both juveniles and adults, see *Managing a Trial Under the Controlled Substances Act*, Chapter 15 (MJI, 1995).

### A. Alternative Sentences for Juveniles Convicted of Delivery or Possession of 650 Grams or More of Schedule 1 or 2 Narcotics or Cocaine

If the juvenile is convicted of a violation or a conspiracy to commit a violation of MCL 333.7401(2)(a)(i); MSA 14.15(7401)(2)(a)(i), manufacture, delivery, or possession with intent to manufacture or deliver 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, or MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i), possession of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine, the court may impose the alternative sentences permitted under those sections if the court determines that the best interests of the public would be served. MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n).

The alternative sentence permitted under the above-named sections is a term of years not less than 25 years rather than mandatory life in prison. MCL 333.7401(2)(a)(i)(B); MSA 14.15(7401)(2)(a)(i)(B), and MCL 333.7403(2)(a)(i)(B); MSA 14.15(7403)(2)(a)(i)(B).

### B. Alternative Sentences for Juveniles Convicted of Delivery or Possession of Less Than 650 Grams of Schedule 1 or 2 Narcotics or Cocaine

If the juvenile is convicted of a violation of MCL 333.7401(2)(a)(ii)–(iv); MSA 14.15(7401)(2)(a)(ii)–(iv), or MCL 333.7403(2)(a)(ii)–(iv); MSA 14.15(7403)(2)(a)(ii)–(iv), the court may depart from the mandatory

minimum terms listed below if the juvenile has not previously been convicted of a felony or an assaultive crime, and has not been convicted of another felony or assaultive crime arising from the same transaction as the controlled substance violation. MCL 333.7401(4)(b); MSA 14.15(7401)(4)(b), and MCL 333.7403(3)(b); MSA 14.15(7403)(3)(b).

The controlled substance offenses covered by this alternative sentencing provision and their mandatory minimum terms are as follows:

- F Manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver the following amounts of a Schedule 1 or 2 narcotic drug or cocaine:
  - 225 grams or more, but less than 650 grams. Not less than 20 years nor more than 30 years. MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii).
  - 50 grams or more, but less than 225 grams. Not less than 10 years nor more than 20 years. MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii).
  - Less than 50 grams. Not less than one year nor more than 20 years, and may be fined not more than \$25,000.00, *or* placed on probation for life. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv).
- F Possession of the following amounts of a Schedule 1 or 2 narcotic drug or cocaine:
  - 225 grams or more, but less than 650 grams. Not less than 20 years nor more than 30 years. MCL 333.7403(2)(a)(ii); MSA 14.15(7403)(2)(a)(ii).
  - 50 grams or more, but less than 225 grams. Not less than 10 years nor more than 20 years. MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii).
  - 25 grams or more, but less than 50 grams. Not less than one year nor more than four years, and may be fined not more than \$25,000.00, *or* placed on probation for life. MCL 333.7403(2)(a)(iv); MSA 14.15(7403)(2)(a)(iv).

**NOTE:** It does not appear that the court also needs “substantial and compelling reasons” to depart from the mandatory minimum sentences listed above. See MCL 333.7401(4)(b); MSA 14.15(7401)(4)(b), and MCL 333.7403(3)(b); MSA 14.15(7403)(3)(b). See also *Managing a Trial Under the Controlled Substances Act*, Section 15.6 (MJI, 1995), for a discussion of what constitutes “substantial and compelling reasons” under these statutes.

As used in this section, assaultive crime means any of the following offenses:

- F assault and battery, MCL 750.81; MSA 28.276;
- F assault, infliction of serious injury, MCL 750.81a; MSA 28.276(1);
- F felonious assault, MCL 750.82; MSA 28.277;
- F assault with intent to murder, MCL 750.83; MSA 28.278;
- F assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to commit a felony, MCL 750.87; MSA 28.282;
- F assault with intent to rob while unarmed, MCL 750.88; MSA 28.283;
- F assault with intent to rob while armed, MCL 750.89; MSA 28.284; or
- F sexual intercourse under pretext of medical treatment, MCL 750.90; MSA 28.285.

MCL 333.7401(5)(a); MSA 14.15(7401)(5)(a), and MCL 333.7403(4); MSA 14.15(7403)(4).

## 19.10 Required Procedures for Delayed Imposition of Adult Sentences

\*See Forms JC 73 and 74.

The court may delay imposing a sentence of imprisonment for a period not longer than the period during which the court has jurisdiction over the juvenile by entering an order of disposition delaying imposition of sentence and placing the juvenile on probation upon the terms and conditions it considers appropriate, including any disposition under MCL 712A.18; MSA 27.3178(598.18).<sup>\*</sup> If the court delays imposing sentence under this section, MCL 712A.18i; MSA 27.3178(598.18i), applies. MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n).

\*See Chapter 21 for a complete discussion of the review of delayed sentences.

According to MCL 712A.18i(1); MSA 27.3178(598.18i)(1), a delay in sentencing does not deprive the court of jurisdiction to sentence the juvenile under MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), at any time during the delay.<sup>\*</sup>

If the court, following conviction in a designated case, enters an order of disposition delaying imposition of sentence and placing the juvenile on probation, the probation supervision and related services shall not be performed by employees of the Department of Corrections. MCL 712A.9a; MSA 27.3178(598.9a). In such cases, probation supervision and related services will be performed by Family Division probation officers or by Family Independence Agency delinquency workers.



**NOTE:** MCL 712A.18h; MSA 27.3178(598.18h), states that juveniles “sentenced to imprisonment under section 18(1)(n) of this chapter shall not be committed to the jurisdiction of the department of corrections.” This limitation does not apply to juveniles convicted of specified juvenile violations. *Id.*\* Because MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), deals with the initial decision to impose or delay imposition of sentence, it is unclear whether juveniles may be committed to the Department of Corrections during the delay in imposition of sentence. See Section 19.1, above.

When imposition of an adult sentence has been delayed, the court may impose sentence at any time during the delay under MCL 712A.18i; MSA 27.3178(598.18i), and section (11) of that statute contemplates a sentence of imprisonment. Thus, it appears that commitment to the Department of Corrections is a sentencing option in court-designated cases during the period that the court has jurisdiction over the juvenile. See also Section 21.12, Note 1, for a discussion of limitations on sentencing juveniles following probation violations requiring probation revocation, where the juveniles were originally convicted of non-specified juvenile violations.

\*See Section 19.6, above, for a list of offenses for which juveniles may be committed to the Department of Corrections and their maximum penalties. See also MCL 791.220g; MSA 28.2290(7), which provides for youth correctional facilities within the Department of Corrections.

